

REMARKS

Claims 1-3 remain in the case. Claim 1 has been rejected under 35 U.S.C. 103(a) as obvious based upon the newly cited Viaud et al reference, in view of Olin. This rejection is traversed and reconsideration is respectfully requested for the following reasons:

A critical aspect of the Applicants claimed improvement is that its *ejection element is one having a length long enough to hold a dumped bail sufficiently distant from the baler to allow the tailgate to close.....*

In order to *be long enough*, the ejection element must extend behind the end of the machine, as clearly illustrated in the Applicants specification.

The Viand reference has been cited for having an ejection element (74) having a length *long enough*. However, in point of fact Viaud states in the last sentence of his abstract that element

“(74) is contained entirely within the confines of the machine, and thus, does not extend behind it”.
[Emphasis Added]

Also note Viaud’s specification at column 3, lines 25-28 recites “support (74) does not protrude beyond the back of the gate, and ... is contained well within the confines of the rest of the machine”. If element (74) does not extend behind the machine then element (74), contrary to the assertion set forth in the final rejection, is not *long enough to hold a dumped bale sufficiently distant from the baler to allow the tailgate to close*.

Therefore, the Viaud reference teaches away from the critical improvement of the Applicants invention which protects the tailgate from being damaged by a dumped bale backing up against the tailgate. The Olin reference does not correct Viaud’s deficiency.

Contrary to the present invention, which protects the tailgate from damage while the injection element is in the *home position*, the Olin reference relies upon its bumper element (50) to protect the tailgate when it is in the *discharge* position by a kicking

action. See column 4, lines 19-20 of the Olin reference. Viaud in view of Olin would, at best, require Olin's kicking action. There is no suggestion in either reference, of the desirability of modifying a baler in the manner claimed by the Applicant's invention. Therefore, such modification cannot be obvious.

"The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification": [In re Gordon, 733 F.2d at 902, 221USPQ at 1127 (Fed. Cir. 1984)].

Furthermore, Viaud's goal is mutually exclusive of the Applicant's design because Viaud states at column 2, lines 6-8:

"Thus, without adding to the overall length of the machine, it is possible to alleviate the problem of the completed bale fouling the gate".

However, Viaud relies on the bale rolling away from the machine, so his machine cannot solve the Applicants' problem.

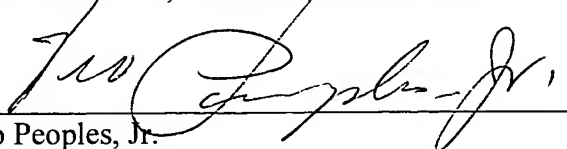
The Applicants do indeed add to the overall length.

The claims therefore are believed to be patentable distinct over the references of record and reconsideration is respectfully requested.

A Notice of Appeal is being simultaneously filed with this request for reconsideration.

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